

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Petrie Stores Corp. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9-A of the Tax Law
for the Years 1969 - 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Petrie Stores Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

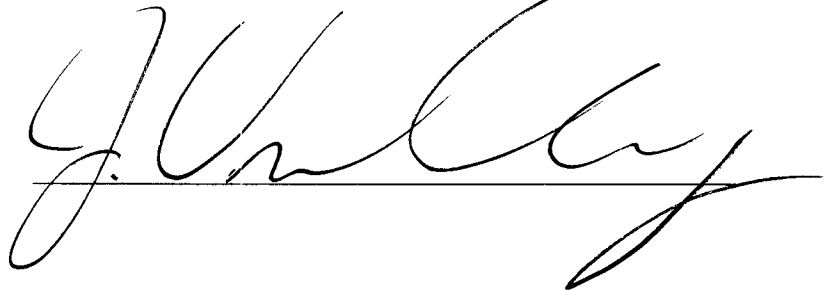
Petrie Stores Corp.
32 So. State St.
Chicago, IL 60603

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp

A large, stylized handwritten signature, likely of Jay Vredenburg, written in dark ink over a horizontal line.

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of
Petrie Stores Corp. :
for Redetermination of a Deficiency or a Revision :
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Corporation Franchise Tax :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Ira J. Palestin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Ira J. Palestin
529 Fifth Ave.
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 2, 1980

Petrie Stores Corp.
32 So. State St.
Chicago, IL 60603

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ira J. Palestin
529 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PETRIE STORES CORPORATION	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on a Business :	:	
Corporation under Article 9-A of the	:	
Tax Law for the Years 1969 through 1971.	:	

Petitioner, Petrie Stores Corporation, 32 South State Street, Chicago, Illinois 60603, filed a petition for redetermination of a deficiency or for refund of franchise tax on a business corporation under Article 9-A of the Tax Law for the years 1969 through 1971 (File No. 11683).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 18, 1978 at 10:45 A.M. Petitioner appeared by Ira J. Palestin, Esq. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether petitioner was required to report its "entire net income" as adjusted by the Internal Revenue Service, in filing the New York State Corporation Franchise Tax Report for 1969 through 1971.

II. Whether the New York State Tax Commission is bound by allocation adjustments contained in a December 28, 1953 letter from the Corporation Tax Bureau.

FINDINGS OF FACT

1. On December 15, 1972, the Corporation Tax Bureau issued a Statement of Audit Adjustment against petitioner for the periods ending January 31, 1969,

January 31, 1970 and January 31, 1971. The Corporation Tax Bureau issued notices of deficiency for said periods in the amounts of \$2,493.65, plus interest of \$536.13, for a total due for 1969 of \$3,029.78, \$56,148.68, plus interest of \$8,703.05, for a total due for 1970 of \$64,851.73, and \$53,868.82, plus interest of \$5,117.54, for a total due for 1971 of \$58,986.36.

2. Petitioner, Petrie Stores Corporation, is the parent corporation of some 300 wholly-owned subsidiaries. Each subsidiary operates a retail ladies' apparel store. In the New York operation, petitioner directs purchasing and merchandising activities for the subsidiary corporations' group. From the Chicago office, petitioner additionally performs general administrative services to the corporate chain, including bookkeeping, accounting and legal activity.

3. By letter of December 28, 1953, the Corporation Tax Bureau affirmed prior discussions that the inclusion of an additional amount of income subject to a tax of 5 percent of the service fees which were charged subsidiary companies was equitable, and was in line with the treatment of other taxpayers who were in similar circumstances. This was in reference to applications for revision of franchise tax under Article 9-A, for the privilege years begun February 1, 1945 to 1951, inclusive. Petitioner followed this adjustment. In addition, the business allocation percentage was adjusted by including in the receipts factor, the full amount of service fees which were charged plus 5 percent of such charges. The New York State portion was computed by the ratio of what the New York office expense bore to total office expense. Petitioner's corporate franchise tax returns for 1952 through 1968 reflected this adjustment.

4. As a result of a Federal audit for the years ending January 31, 1967 and January 31, 1968, an adjustment (IRC section 482) was made, whereby Federal taxable income was increased by an amount equaling 2 percent of each subsidiary's sales. Petitioner's 1969 New York State Franchise Tax Report included, as

subsidiary profit, 2 percent of the gross sales to subsidiaries. This followed the Federal adjustment. However, in petitioner's 1970 and 1971 New York State franchise tax reports, it ignored the Federal adjustment and reverted to the New York State adjustment which was contained in the December 28, 1953 letter. The Notice of Deficiency assessing additional tax due was based on the Federal adjustment for the fiscal years ended January 31, 1970 and January 31, 1971. Petitioner requested a refund for the year ended January 31, 1969 on the basis of the adjustment which was provided in the December 28, 1953 letter, rather than the filed report which contained the Federal adjustment.

5. Petitioner conceded and accepted the addition to income of adjustments which were made for worthless securities and subsidiary bad debts for said period.

CONCLUSIONS OF LAW

A. That section 208(a) of the Tax Law states that the term "entire net income" means the total net income from all sources, which shall presumably be the same as the entire taxable income which the taxpayer is required to report to the United States Treasury Department.

B. That section 210(8) of the Tax Law authorizes the State Tax Commission to adjust a business allocation percentage by including one or more other factors such as expenses, purchases and contract values which are reasonably attributable to New York State, where it appears to the Commission that the allocation percentage does not properly reflect the activity, business, income or capital of a taxpayer within the State, so that a proper allocation of income results.

C. That the New York State Franchise Tax Report which was filed by petitioner for the fiscal year ending January 31, 1969, accurately reflected

the "entire net income" of Petrie Stores Corporation as reported to the United States Treasury Department, in accordance with the meaning and intent of section 208(a) of the Tax Law.

D. That Petrie Stores Corporation must follow the Federal adjustment for 1970 and 1971 in its New York State franchise tax reports to accurately reflect the "entire net income" as reported to the United States Treasury Department, in accordance with the meaning and intent of section 208(a) of the Tax Law.

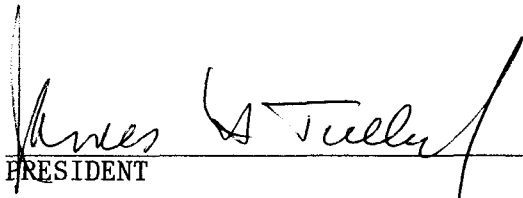
E. That the adjustment set forth by the Corporation Tax Bureau in the December 28, 1953 letter is not a written agreement of the State Tax Commission, as set forth in section 171(18) of the Tax Law; therefore, it is not final and conclusive.

F. That the petition of Petrie Stores Corporation is denied and the Notice of Deficiency issued December 15, 1972 is sustained.

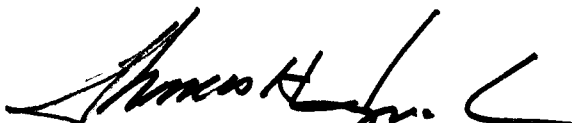
DATED: Albany, New York

JAN 2 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER